

PART XIX FAIR HEARINGS AND ADMINISTRATIVE DISQUALIFICATION HEARINGS

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A. INTRODUCTION (7 CFR 273.15(c))

The Food Stamp Act of 1977, as amended, requires that each State provide a fair hearing to any household aggrieved by any action of the local social services agency which affects the participation of the household in the Food Stamp Program.

Any individual has the right to appeal and receive a fair hearing before the State (a) because a claim for benefits is denied, or is not acted upon with reasonable promptness; or, (b) because the individual is aggrieved by any other agency action affecting entitlement to or receipt of benefits, or by agency policy as it affects the individual's situation.

Any household aggrieved by any action of the local agency or local issuance agency in its administration of the Program which affects the participation of the household must be provided with a fair hearing before the State. Within 60 days of receipt of a request for a fair hearing, the State must assure that the hearing is conducted, a decision is reached, and the household and local agency are notified of the decision.

1. Role of the Commissioner of Social Services

§ 63.1-116 through § 63.1-119 of the Code of Virginia give the **Commissioner** of Social Services ultimate authority and responsibility for fulfillment of the provisions of the appeal process. The State Board of Social Services, as authorized by § 63.1-25 of the Code of Virginia, establishes policies and procedures to implement the appeal process in accordance with the regulations of USDA.

The **Commissioner** may delegate to duly qualified hearing officers the authority to make decisions in any appeal case. **The Commissioner must appoint a panel to review hearing decisions upon the request of either the household or the local agency. The panel must report periodically to the Commissioner regarding the need for changes in the conduct of future hearings, or to policy and procedures related to the issue of the appeal.**

2. Definitions

The following definitions will be applicable to the terms used in this chapter.

- a. State Hearing Authority - A comprehensive term used to designate the State decision-maker in appeal cases; as such, it includes the **Commissioner** and qualified hearing officers of the State Department of Social Services, in whom the **Commissioner** has placed full authority to make binding decisions in appeal cases in the name of the State Hearing Authority.

- b. Hearing Officer - An impartial representative of the State to whom appeals are assigned and by whom they are heard. The hearing officer must not have been involved in any way with the agency action on appeal. The hearing officer is given the authority to conduct and control hearings and to decide appeal cases.
- c. Claimant - The food stamp household that files an appeal regarding some aspect of their entitlement to participate in the Program.

B. RIGHT OF APPEAL

Every applicant for and recipient of food stamps must be informed in writing at the time of application and at the time of any action, proposed or taken, affecting participation, of the right to a fair hearing, of the method by which a hearing may be obtained, and of the right to be represented by others or to represent himself. As outlined in [Part I.I](#), appeals information must be given to each applicant at the time of initial application, reapplication and recertification, and at the household's request.

In addition to the use of written material, the local agency worker has the responsibility of informing the household orally of the right to appeal if it is dissatisfied with any action taken by the local agency or the failure to act in relation to its eligibility or level of participation. The household must also be offered an opportunity at the time the Notice of Action to deny or reduce benefits or the Advance Notice of Proposed Action is issued to request an agency conference, at which time he must receive an explanation of the proposed action and must have an opportunity to present any information on which his disagreement with such action is based. **The Notice of Action and the Advance Notice of Proposed Action forms may be used interchangeably, except as required for issuing a joint notice with public assistance programs (See [Part XIV.A.3](#)).**

Each household has a right to a fair hearing to appeal a denial, reduction, or termination of benefits due to a determination that a household member is not exempt from work registration and employment services requirements, or a determination of failure to comply with work registration and employment services requirements.

Individuals or households may appeal local agency actions **related to work registration and employment services** if the individual or household believes that a finding of failure to comply has resulted from improper decisions on these matters. **These actions include** exemption status, the type of employment and training requirement imposed, or local agency refusal to make a finding of good cause.

C. HEARING REQUEST (7 CFR 273.15 (h))

A household that feels aggrieved by any local agency action may request a hearing by any clear expression, oral or written, to the effect that an opportunity to present the case to a higher authority is desired. Such request may be made by a household member, the authorized representative, or some other person acting on the household's behalf, such as a legal representative, relative or friend. The right to make such a request is not to be limited or interfered with in any way. If a household makes an oral request for a hearing, the local agency must complete the procedures necessary to start the hearing process. The Notice of Appeal form must be made available to the household to facilitate appeal requests; however, completion of this form by the household is not required if a clear expression for a hearing has been made by some other method. Local agencies must help the claimant submit and process the request, and prepare the case, if needed. Information and referral services must be provided to help claimants make use of any legal services available in the community that can provide legal representation at the hearing.

Upon request, the local agency must make available, without charge, information from the case file for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing. Confidential information, such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecutions, must be protected from release.

D. TIME LIMITS FOR REQUESTING A HEARING (7 CFR 273.15 (g))

A household must be allowed to request a hearing on any adverse action or loss of benefits which occurred in the prior ninety (90) days. Action by the agency will also include a denial of a request for restoration of any benefits lost more than 90 days, but less than a year prior to the request. The household must be allowed to appeal and request a hearing at any time during the certification period if it is dissatisfied with the current level of benefits.

If the amount of a claim was not established by a fair hearing or a court, the household will have 90 days from the date of notification of the claim to appeal the amount of the claim.

E. LOCAL AGENCY CONFERENCE (7 CFR 273.15 (d))

When a household advises the local agency that it wishes to appeal an adverse action, that household must be offered the opportunity to request an agency conference. At the conference, the recipient may be represented by an authorized representative, legal counsel, relative or friend. Upon

receipt of a request for such a conference, the local agency must schedule the conference within ten working days from the date of the request or within two working days if the household is contesting a denial of expedited service, unless the household requests that the conference be scheduled later. The recipient's failure to request a local agency conference has no effect upon the right to appeal and have a fair hearing or upon the right to continued participation.

The conference with the local agency is designed to allow the recipient to request and receive, within ten working days, a verbal explanation of the reason adverse action affecting participation is being taken. The intent of the conference is to avoid a lack of understanding on the part of the recipient. The recipient should be given the opportunity to verbalize reasons for wishing to continue to participate in the Program.

The conference may be attended by the eligibility worker, but must be attended by an eligibility supervisor or the superintendent/director and a household member or its representative. For appeals involving food stamp work registration/employment and training sanctions, with the exception of the situation where a household member refuses to register in the first place, a representative from the Employment Services Program (ESP) service staff must be present during the conference and the appeal hearing. The eligibility unit must notify the ESP staff of the date and time of the conference.

The hearing officer must notify the ESP staff of the date and time of the appeal hearing. The agency must respond to each reason given by the recipient. The conference should reveal that the proposed action is appropriate or that the proposed action is inappropriate because:

1. the recipient is now able to immediately provide the information that had not been previously provided; or,
2. there has been a change in circumstances that affects some other area of eligibility.

The local agency conference may or may not result in a change in the agency decision regarding action. Regardless of the result of the conference, the household must be provided with a fair hearing unless it makes a written withdrawal of the request for a hearing. If the agency decision is not to take action or to take action different from that indicated on the advance notice, the recipient must be so advised in writing and a notation to the same effect made on the agency copy of the advance notice. If the recipient is not satisfied with the agency action following the conference and wishes its request for a fair hearing to stand, the fact that the conference was held will in no way affect the appeal or the required time limits for filing or implementing a decision.

F. PARTICIPATION DURING APPEAL (7 CFR 273.15 (k))

When a verbal or written hearing request is made during the advance notice period, the household is entitled to continued participation until the end of the current certification period or until a decision on the fair hearing is reached, unless the household specifically waives continuation of benefits in writing. The household's participation in the Program will be continued on the basis authorized immediately prior to the adverse action notice. Continuation of benefits during the appeal process is only appropriate if the appeal is a result of a change which occurred during the certification period and for which an adverse action notice was issued or required. It must be explained to the household that the continuation of benefits is strictly at the household's option and that should it elect to have benefits continued and the hearing decision upholds the agency action, the household will be required to repay the value of any coupons overissued prior to and during the period such benefits were continued. **A Notice of Action must be provided to the household when benefits are continued.**

1. Determining Continuation of Benefits During the Appeal Process

The local agency must be aware that an appeal was made during the required time frame prior to authorizing continued participation. This means that the local agency must have (1) received the request directly from the household, or (2) written or verbal confirmation from the Chief Hearing Officer or a hearing officer that a timely appeal request was received.

If a hearing request is not made within the period provided by the adverse action notice, benefits shall be reduced or terminated as provided in the notice. If the household establishes that its failure to make the request within the advance notice period was for good cause, the hearing officer shall require that the local agency reinstate the benefits to the prior basis.

When benefits are reduced or terminated due to a mass change, participation on the prior basis shall be reinstated only if the issue being contested is that food stamp eligibility or benefits were improperly computed or that federal law or regulation is being misapplied or misinterpreted by the State. Households requesting an appeal of a mass change are eligible for continuation of benefits as long as they request a hearing within 90 days of the action being appealed and meet the requirements of this paragraph (FNS Policy Memo 81-17).

2. Exceptions to Continuation of Benefits

Once benefits have been continued or reinstated during the appeal process, they must not be reduced or terminated prior to the receipt of the official hearing decision unless:

- a. the certification period expires;
- b. the appeal issue is one of federal law or regulation and written notice has been received from the hearing officer;
- c. a change in circumstances affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending and a request for a second hearing has not been received; or,
- d. a mass change occurs.

G. PREPARATION FOR THE HEARING

The appeal request, upon receipt by the Hearings Manager, must be assigned to a regional hearing officer who will validate the appeal and acknowledge the request by letter to the claimant with a copy to the local agency and any other appropriate parties.

The local agency must prepare a Summary of Facts of the case to be forwarded to the hearing officer no fewer than five days prior to the hearing. A general outline of this summary follows, although the content may vary to fit the particular case situation. All statements made should be factual and phrased in a way not objectionable to the claimant.

For appeals involving Food Stamp work registration/employment and training sanctions, with the exception of the situation where a household member refuses to register in the first place, the Summary of Facts must be prepared jointly by the eligibility staff and E & T staff to ensure that E & T eligibility and participation issues are stated in the summary.

The Summary of Facts should include the following:

1. Identifying Information:

- Name of local agency
- Name, address and case number of claimant
- Persons included in the food stamp household
- Name, age, relationship to claimant
- Other persons in household
- Name, relationship

2. Date of Request and Reason for Appeal (quote the claimant in requesting the hearing)

3. Statement of Agency Action

- a. Give a brief, factual statement of the reason for agency action, or failure to act, and the nature and date of agency action. If the claimant requested a local agency conference, include result of conference. If agency error, negligence or administrative breakdown was involved, say so.
 - b. Under the heading "Agency Policy", give citation and quotation from the Virginia Food Stamp Program Certification Manual of the policy statement on which agency action was based.
 - c. If the level of participation is in question, give a detailed breakdown of the claimant's financial circumstances as it appears on the food stamp application with whatever explanation may be necessary.
 - d. Give the date and result of the conference, if any.
4. State whether participation is continuing during the appeal process on the basis authorized immediately prior to the adverse action notice.
5. The Summary must be signed and dated by the superintendent/director. The local agency will retain a copy of the Summary, which is the official document for presentation of its case at the hearing.

The local agency must mail a copy of the Summary and any other documents and records, which are to be used at the hearing, to the claimant, or his representative, at a reasonable time prior to the date of the hearing.

If documents pertinent to the hearing are received by the local agency or there are changes in the situation following transmittal of the Summary, copies of the documents and a written statement of the changes must be mailed in advance of the hearing to the hearing officer. Copies of such additional information must also be made available to the claimant or his representative.

During the period between the filing of the appeal and the receipt of the decision from the State Hearing Authority, the local agency continues to be administratively responsible for the case on appeal. This responsibility includes appropriate adjustment in eligibility status or level of participation necessitated by changes in the claimant's situation, income, changes in household composition, or changes for any other reason.

If a change in circumstances occurs during the appeal process **resulting in a reduction or termination of benefits**, an advance notice must be sent. If the claimant fails to appeal the proposed additional change, participation

will be adjusted with respect to this change in circumstances. The change must be reported to the hearing officer for consideration of possible effect on the decision.

H. RESPONSIBILITIES OF HEARING AUTHORITY (7 CFR 273.15 (i))

In preparation of the hearing, the hearing authority must consider and act on the following situations:

1. If the request for a hearing is from a household, such as migrant farm workers, that plans to move from the jurisdiction of the hearing officer, the hearing must be held as quickly as possible so a decision may be reached before the household leaves the area.
2. If the household requests postponement of the hearing, it must be granted. The postponement may not exceed 30 days. The time limit for action on the decision may be extended for as many days as the hearing is postponed.
3. If there are a series of individual requests for hearings, the appropriateness of conducting a single group hearing must be determined. The hearing officer may consolidate only cases in which the sole issue is one of State and/or federal law, regulation or policy, and with the consent of the appealing parties.

In all group hearings, the policies governing hearings must be followed. Each individual claimant must be permitted to present his own case or be represented by legal counsel or other spokesman. If the claimants request a group hearing on an issue specified in this chapter, the request must be granted.

I. DENIAL OR DISMISSAL OF REQUEST FOR HEARING (7 CFR 273.15(j))

A request for a hearing will not be denied or dismissed unless **the household or its representative:**

1. fails to request the hearing within 90 days of the date of agency action or failure to act;
2. files a written request to withdraw;
3. fails to appear at the scheduled hearing without good cause
4. **files an oral request to withdraw without coercion. The hearing officer must send the household a notice to confirm the withdrawal and that offers the household an opportunity to reinstate the hearing within ten days. If reinstated, the 60-day process period will begin anew.**

J. HEARING PROCEDURE

The hearing must be conducted at a time, date, and place convenient to the claimant(s). Preliminary written notice must be given at least 10 days prior to the hearing. (Allow two days for mailing in addition to the postmark date.) The claimant will be requested to advise the local agency immediately if the scheduled date or place is inconvenient, but, without such notification, it is assumed the arrangements are convenient. The hearing may be conducted through a teleconference.

The local agency is responsible for assuring that the claimant has transportation to the hearing if the claimant is unable to make arrangements.

When a claimant indicates that the scheduled date is not convenient, the hearing date may be extended. The **hearing officer** will determine whether the provision of extension is being abused and reserves the right to set a date beyond which the hearing will not be delayed.

The hearing is to be conducted in an informal atmosphere and every effort will be made to arrive at the facts of the case in a way that will put the claimant at ease. It is the hearing officer's responsibility to assure that this is done, and the hearing officer may, within the discretion allowed, designate those persons who may attend the hearing or the particular portion of the hearing they may attend. The hearing officer has full authority to recess the hearing or to continue to another date in the interest of fairness.

When the issue on appeal is of a medical nature (e.g., concerning a diagnosis, an examining physician's report, or a VR Disability Determination Unit decision), the hearing officer may request a medical assessment by someone other than the person(s) involved in making the original examination. Such an assessment will be obtained at combined State and local expense from a source satisfactory to the claimant and will be made a part of the hearing record.

Any material from the food stamp case record must be made available upon request to the claimant and/or his representative. Additionally, a household must be allowed to examine its employment component case file at a reasonable time before the date of the fair hearing. Confidential or other information, which the head of the household or his representative does not have an opportunity to hear, see, and respond to, must not be introduced at the hearing, nor will it become a part of the hearing record.

It is within the discretion of the hearing officer to designate what is pertinent to an issue on appeal and admissible as evidence during the hearing, including the entire case record, if appropriate.

When benefits are continued pending a hearing decision, the hearing officer must rule at the hearing whether the issue being appealed is one of federal law, regulation or policy, or whether the issue relates to a matter of fact or judgement applicable to an individual case. If the hearing officer rules that the issue being appealed is one of federal law, regulation or policy, benefits will be reduced or terminated as proposed by the Advance Notice of Proposed Action or the Notice of Action.

If, during the appeal process, the need for adjustment in eligibility or basis of issuance in favor of the claimant becomes evident, reconsideration or modification of the former decision will be made by the local agency. For instance, new information may be presented, clarification of policy may occur, or the need for mathematical correction in computations occurs. If such adjustment is satisfactory to the claimant, he has the choice either of withdrawing the appeal or of having a formal decision made by the Hearing Authority.

The local agency employment services staff or the agency's designee operating the relevant employment and training component must receive sufficient advance notice of the hearing to either permit the attendance of a representative or ensure that a representative will be available for questioning by telephone during the hearing. If a hearing is scheduled by households appealing a work registration or employment and training issue, the results of the hearing shall be binding on the local agency.

K. EVENTS OF THE HEARING

The hearing must be attended by the eligibility worker and the claimant or its representative. The household may also bring relatives or friends along if it so chooses. The hearing officer has the authority to limit the number of persons present if space limitations exist. The hearing officer will coordinate the following activities at the hearing:

1. Identification of those present for the record.
2. **Provide an** opening statement to explain the hearing purpose, procedure to be followed, how and by whom a decision may be made and to be communicated to claimant and local agency, and the option of either party, if decision is made by the hearing officer, to request review of the decision by the **Commissioner**.
3. The claimant or his representative must be given the opportunity to:
 - a) examine all documents and records which are used at the hearing;

- b) present the case or have it presented by legal counsel or other person;
 - c) bring witnesses;
 - d) establish pertinent facts and advance arguments; and,
 - e) question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.
4. The local agency will have the opportunity to clarify or modify its statements contained in the Summary of Facts and to question the claimant, his representative, or witnesses on the important issue(s). The local agency has the same rights as the claimant to examine documents, bring witnesses, advance arguments, question evidence and submit evidence.
5. Evidence admissible at the hearing is limited to information having a bearing on the issue(s) being appealed. Such issues include those given by the claimant at the time of the appeal and those given by the local agency as a basis for its actions or inaction under appeal. The hearing officer determines whether an issue other than the one being appealed may be introduced, but no additional issues are admissible without concurrence of the claimant and local agency.

L. DUTIES OF THE HEARING OFFICER

The hearing officer must:

- 1. Ensure that all relevant issues are considered;
- 2. Request, receive, and make part of the record all evidence determined necessary to decide the issues being raised;
- 3. Regulate the conduct of the hearing consistent with due process to ensure an orderly hearing;
- 4. Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the local agency; and,
- 5. Render a decision in the name of the State Hearing Authority. Decisions must comply with regulations as stated in the Virginia Food Stamp Certification Manual **and the Virginia EBT Policies and Procedures Guide** and must be based on the hearing record. An official report containing the substance of what transpired at the hearing, the findings and conclusions of the hearing officer, together with all papers and requests filed in the proceeding, will constitute the record for decision.

M. HEARING DECISION (7 CFR 273.15(q))

An official report containing the substance of the hearing, together with the findings and conclusions of the hearing officer, and all papers filed in the proceeding, will constitute the record for decision. The household and the local agency must each be notified of the decision by a copy of the written official report of the decision.

The decision of the hearing officer will be final and binding when presented in writing to the claimant and the local agency. **The decision** must be put into effect regardless of whether review by the **Commissioner** of the decision has been requested.

The claimant, the claimant's representative, and the local agency must be given written notice of their right to request a review of the hearing officer's decision by the **Commissioner**. In addition to the claimant's right to request a review by the **Commissioner**, the claimant may seek a judicial review of the decision.

The request for the **Commissioner's** review by either party must be submitted in writing within 10 days following the date of the hearing officer's written decision with a written statement of the reasons for the objection to the decision. A copy of the review request by the local agency must be submitted to the claimant.

When a request **for review** is submitted, the **Commissioner** will review the decision **and** confirm or modify the original decision. The claimant, the claimant's representative, the hearing officer and local agency will be notified in writing of the result of the review.

The **hearing officer**, within a reasonable time, may reconsider any decision if there is new evidence that the original decision was not a valid one. In this regard, the hearing officer's decision is also subject to review by the Hearings Manager.

When the decision of the **Commissioner** is adverse to the claimant, all available administrative remedies have been exhausted.

All hearing records and decisions are available for public inspection and copying, subject to the disclosure safeguards, provided identifying names and addresses of household members and other members of the public are kept confidential.

N. IMPLEMENTATION OF DECISIONS

All final hearing decisions must be reflected in the household's coupon allotment within time limits specified below:

1. Decisions that result in an increase in household benefits must be reflected in the benefit amount within 10 days of the receipt of the hearing decision, even if the local agency must provide a supplementary allotment or otherwise provide the household with an opportunity to obtain the allotment outside of the normal issuance cycle. The local agency may take longer than 10 days if it elects to make the decision effective in the household's normal cycle, provided that the issuance will occur within 60 days from the household's request for the hearing.
2. Decisions that result in a decrease in household benefits must be reflected in the next scheduled issuance following receipt of the hearing decision. No additional notice to the household is needed.
3. When the decision of the hearing officer or Commissioner, as appropriate, determines that a household has been improperly denied program benefits or as been issued a smaller allotment than it was due, lost benefits must be provided to the household in accordance with Part XVI.A.
4. When the decision of the hearing officer or Commissioner, as appropriate, upholds the local agency's action, a claim against the household must be prepared in accordance with Part XVII.A for any overissuances.
- O. INTRODUCTION TO ADMINISTRATIVE DISQUALIFICATION HEARINGS (ADH) (7 CFR 273.16(e))

An Administrative Disqualification Hearing (ADH) is an impartial review by a hearing officer of a household member's actions involving an alleged intentional program violation (IPV) for the purpose of rendering a decision of guilty or not guilty of committing an IPV.

In order to request an ADH, there must be clear and convincing evidence that demonstrates that a household member committed or intended to commit an IPV as described in Definitions. Examples of evidence include, but are not limited to, the following:

1. Written verification of unreported income or resources received by the household;
2. Verification that the household understands its reporting requirements by its signature under the rights and responsibilities section of the application or on some other form;
3. An application or change report form submitted during the period the IPV is alleged to have occurred which omits the information in question;
4. Documented contacts with the household during the period the IPV is

alleged to have occurred in which the household failed to report information in response to agency queries about household circumstances.

Each example noted above does not have to be presented to document intentionality however it is likely that such deliberateness can only be shown through the presentation of more than one of these evidence examples.

P. INITIATION OF AN ADH

The local agency must ensure that the evidence against the household member alleged to have committed the IPV is reviewed by either an Eligibility Supervisor or Agency Director/Superintendent for purposes of certifying that such evidence warrants a referral for an ADH.

Prior to submitting the Referral for Administrative Disqualification Hearing to the State Hearing Authority, the local agency must provide the forms, Notification of Intentional Program Violation and Waiver of Administrative Disqualification Hearing and the "Administrative Disqualification Hearings" pamphlet to the household member suspected of the IPV. To determine the appropriate disqualification period for the notification form, the agency must access the Disqualified Recipient Subsystem (DRS) data to determine the number of prior disqualifications an individual may have. The DRS information about prior disqualifications must be verified before deciding on the length of the penalty. See [Part XVII.M.2](#) for additional information about DRS.

The waiver must be returned to the agency within 10 days from the date notification is sent to the household in order to avoid submission of the referral of ADH. If a signed waiver is received, no ADH is conducted and the disqualification period is imposed in accordance with policy at [Part XVII.M.1](#). A copy of the signed waiver is to be sent, for federal reporting purposes, to:

Fraud Management

Virginia Department of Social Services
7 North Eighth Street
Richmond, VA 23219-3301

If no waiver to the ADH is received within 10 days, the local agency must submit the Referral for Administrative Disqualification Hearing to the Hearings Manager. The form must include the following information:

1. Identifying Information as requested at the top of the form
2. Summary of the Allegation(s)
3. Summary of the Evidence
4. Copies of documents supporting the allegation.

The referral must be signed and dated by the supervisor or local agency director/superintendent.

If a case is referred for an ADH, it shall not simultaneously be referred for prosecution.

The local agency may combine a fair hearing and an ADH into a single hearing if the factual issues arise out of the same or related circumstances and the household receives prior notice that hearings will be combined.

If the ADH and fair hearing are combined, the agency must follow timeframes for conducting an ADH. If the hearings are combined for the purpose of settling the amount of the claim at the same time as determining whether or not the IPV has occurred, the household will lose its right to a subsequent fair hearing on the amount of the claim. However, the local agency must, at the household's request, allow the household to waive the 30 day advance notice period for the scheduling of the ADH when the hearings are combined.

Q. SCHEDULING THE ADH

Upon receipt of the request for the ADH, the Hearings Manager will forward the request to the appropriate hearing officer.

1. Advance Notice of ADH (7 CFR 273.16(e)(3))

The hearing officer will schedule a date for the ADH and provide written notification to the household member suspected of IPV at least 30 days in advance of the date the ADH has been scheduled. The form, "Advance Notice of Administrative Disqualification Hearing" is used for this purpose. The pamphlet which describes the ADH procedures must be sent with the advance notice.

The ADH advance notice may be sent by first class mail, certified mail - return receipt requested, or be any other reliable method. If the notice is sent by first class mail and it is subsequently returned as undeliverable, the hearing may still be held.

Once the ADH has been scheduled, the ADH is to be conducted and a decision made within 90 days of the date the household is notified in writing that the ADH has been scheduled. A copy of the decision must be provided to the household and the local agency.

2. Time and Place of the ADH (7 CFR 273.16(e)(4))

The time and place of the ADH must be arranged so that the hearing is accessible to the household member suspected of IPV. The member or representative may request a postponement of the ADH if the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. The ADH will not be postponed for more than 30 days and the State Hearing Authority may limit the number of postponements to one. When a hearing is postponed, the time limits for rendering and notifying the household and agency of the decision is extended for as many days as the hearing is postponed.

3. Failure of Household Member to Appear at the ADH

If proof of nonreceipt of the ADH advance notice has not been received, the requirement to notify the individual alleged to have committed the IPV has been met. The ADH may be held even if the member or representative subsequently cannot be located or fails to appear without good cause.

The individual has 10 days from the date of the scheduled ADH to present reasons other than nonreceipt of the notice to show good cause for failure to appear at the hearing. Good cause reasons based on nonreceipt of the notice must be presented within 30 days of the scheduled hearing.

Even though the household member is not represented, the hearing officer must carefully consider the evidence and determine if an IPV was committed based on clear and convincing evidence. If the household member is found to have committed IPV but a hearing officer later determines there was good cause for not appearing, the previous decision is no longer valid and a new ADH shall be conducted. The hearing officer who originally ruled on the case may conduct the new hearing. The good cause decision must be entered into the hearings record by the hearing officer.

4. Participation While Awaiting a Hearing (7 CFR 273.16(e)(5))

A pending ADH shall not affect the household's right to be certified and participate in the Food Stamp Program. The household member alleged to have committed an IPV cannot be disqualified through an ADH until a hearing officer finds the individual guilty of IPV, so the eligibility and benefit level of the household is determined in the same manner as for any other household.

R. CONDUCT OF THE ADH

The hearing officer presides and conducts the hearing informally. Technical rules of evidence are not required. The hearing may be conducted via a teleconference. The hearing may also be recorded.

1. Attendance at the ADH

The ADH is attended by persons directly concerned with the issue. This normally means a representative of the local agency and the household member alleged to have committed an IPV and/or the household's representative. If space is limited, the hearings officer has the right to limit the number of persons in attendance.

2. Responsibilities and Duties of Hearing Officer

The hearing officer must:

- a. Identify those present for the record.
- b. Advise the household member or representative that he/she may refuse to answer questions during the hearing.
- c. Explain the purpose of the ADH, the procedure, how and by whom a decision will be reached and communicated, and the option of either the local agency or the household to request review of the hearing officer's decision **by the Commissioner**.
- d. Consider all relevant issues. Even if the household is not present, the hearing officer must carefully consider the evidence and determine if an IPV was committed based on clear and convincing evidence.
- e. Request, receive and make part of the record all evidence determined necessary to render a decision.
- f. Regulate the conduct and course of the hearing consistent with due process to insure an orderly hearing.

3. Rights of the Household

The household member alleged to have committed IPV and/or the representative must be given adequate opportunity to:

- a. Examine all documents and records to be used at the ADH at a reasonable time prior to the ADH as well as during the ADH. The contents of the case file, including the application form and documents of verification used by the local agency to

establish the alleged IPV, must be made available, provided that confidential information, such as the names of individuals who have disclosed information about the household without its knowledge, or the nature and status of pending criminal prosecutions, is protected from release.

If requested by the household or its representative, the local agency shall provide a free copy of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearings officer's decision.

- b. Present its case or have it presented by legal counsel or another person.
- c. Bring witnesses.
- d. Advance arguments without undue interference.
- e. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine witnesses.
- f. Submit evidence to establish all pertinent facts and circumstances in the case.

As the household may not be familiar with the rules of order, it may be necessary to make particular efforts to arrive at the facts of the case in a way that makes the household feel most at ease.

The household member or representative may refuse to answer questions during the hearing.

4. Responsibilities and Duties of Local Agency

The local agency representative is responsible for presenting the agency's case in the ADH. The agency representative has the same rights as the household as listed in [Part XIX.R.3.](#), items a. through f. above.

S. NOTIFICATION OF ADH DECISION (7 CFR 273.16(e)(9))

The hearing officer is responsible for rendering a decision. The decision must be based on clear and convincing evidence from the hearing record, which is an official report of the hearing, including all papers and requests filed in the proceeding. The hearing officer must substantiate the decision by identifying supporting evidence and applicable regulations.

Following the ADH, the hearing officer must prepare a written report of the substance of the hearing that must include findings, conclusions, decision and appropriate recommendations. The decision must specify the reasons for the decisions, identify the supporting evidence, identify pertinent food stamp regulations and respond to reasoned arguments made by the household member or representative.

The hearing officer must notify the household member of the decision. The form "Administrative Disqualification Hearing Decision" must accompany the findings. The Commissioner must inform the household of its right to request review of the decision. If the household member is found guilty of IPV, the decision must advise the household that disqualification will occur.

The determination of IPV by the hearing officer cannot be reversed by a subsequent fair hearing decision.

The household member is entitled to seek relief in a court of appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

The amount of the overissuance subject to repayment may be appealed by a fair hearing, provided that the household member did not request a fair hearing for that reason that was consolidated with the ADH.

If the household member or representative did not appear at the hearing and the hearing officer determines that an IPV was committed, the hearing officer will delay notification of the decision until 10 days after the date of the hearing to allow the individual time to present good cause for failing to attend.

T. IMPLEMENTATION OF THE ADH DECISION

Upon receipt of the notice of a decision from the hearing officer finding the household member guilty of an IPV, the local agency must inform the household of the disqualification by sending a "Notice of Disqualification Due to Intentional Program Violation" or other disqualification notice approved for use. The notice must inform the household of the reason for disqualification and must inform the household that the disqualification will be effective upon receipt of the notice. The household member who committed the IPV must be disqualified in accordance with the length of time specified in [Part XVII.M.1](#). The local agency must also provide written notice to the household of the allotment that will be received, or advise that a recertification application must be filed if the certification period has expired.

If it is determined that the individual did not commit an IPV, no disqualification will be imposed and any overissuance must be handled as a nonfraud claim.